

SENATE, No. 2454

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED NOVEMBER 22, 2010

Sponsored by:

Senator FRED H. MADDEN, JR.

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District 36 (Bergen, Essex and Passaic)

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District 20 (Union)

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SYNOPSIS

“New Jersey Angel Investor Tax Credit Act;” provides credits against corporation business and gross income taxes for investing in New Jersey emerging technology businesses.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 1/7/2011)

1 AN ACT providing credits against certain taxes for investing in New
2 Jersey emerging technology businesses, and amending P.L.1997,
3 c.349, and supplementing chapter 4 of Title 54A of the New
4 Jersey Statutes.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. Section 1 of P.L.1997, c.349 (C.54:10A-5.28) is amended to
10 read as follows:

11 1. **[This act]** Sections 1 through 3 of P.L.1997, c.349
12 (C.54:10A-5.28 through 54:10A-5.30) and section 4 of P.L. _____,
13 c. (C. _____) (pending before the Legislature as this bill) shall be
14 known and may be cited as the "**[Small]** New **[Jersey-based High-**
15 **Technology Business Investment]** Jersey Angel Investor Tax Credit
16 Act."

17 (cf: P.L.1997, c.349, s.1)

18
19 2. Section 2 of P.L.1997, c.349 (C.54:10A-5.29) is amended to
20 read as follows:

21 2. As used in this act:

22 "Advanced computing" means a technology used in the
23 designing and developing of computing hardware and software,
24 including innovations in designing the full spectrum of hardware
25 from hand-held calculators to super computers, and peripheral
26 equipment[;].

27 "Advanced materials" means materials with engineered
28 properties created through the development of specialized
29 processing and synthesis technology, including ceramics, high
30 value-added metals, electronic materials, composites, polymers, and
31 biomaterials[;].

32 "Biotechnology" means the continually expanding body of
33 fundamental knowledge about the functioning of biological systems
34 from the macro level to the molecular and sub-atomic levels, as
35 well as novel products, services, technologies and sub-technologies
36 developed as a result of insights gained from research advances
37 which add to that body of fundamental knowledge[;].

38 "Control[.]" with respect to a corporation[.] means ownership,
39 directly or indirectly, of stock possessing 80% or more of the total
40 combined voting power of all classes of the stock of the corporation
41 entitled to vote; and "control[.]" with respect to a trust[.] means
42 ownership, directly or indirectly, of 80% or more of the beneficial
43 interest in the principal or income of the trust. The ownership of
44 stock in a corporation, of a capital or profits interest in a partnership

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 or association or of a beneficial interest in a trust shall be
2 determined in accordance with the rules for constructive ownership
3 of stock provided in subsection (c) of section 267 of the federal
4 Internal Revenue Code of 1986[, 26 U.S.C.s.267] (26 U.S.C.
5 s.267), other than paragraph (3) of subsection (c) of that section[;].

6 "Controlled group" means one or more chains of corporations
7 connected through stock ownership with a common parent
8 corporation if stock possessing at least 80% of the voting power of
9 all classes of stock of each of the corporations is owned directly or
10 indirectly by one or more of the corporations and the common
11 parent owns directly stock possessing at least 80% of the voting
12 power of all classes of stock of at least one of the other
13 corporations[;].

14 "Director" means the Director of the Division of Taxation in the
15 Department of the Treasury[;].

16 "Electronic device technology" means a technology involving
17 microelectronics, semiconductors, electronic equipment, and
18 instrumentation, radio frequency, microwave, and millimeter
19 electronics, and optical and optic-electrical devices, or data and
20 digital communications and imaging devices[;].

21 ["Environmental technology" means assessment and prevention
22 of threats or damage to human health or the environment,
23 environmental cleanup, or the development of alternative energy
24 sources;]

25 "Life sciences" means the production of medical equipment,
26 ophthalmic goods, medical or dental instruments, diagnostic
27 substances, biopharmaceutical products; or physical and biological
28 research.

29 "Medical device technology" means a technology involving any
30 medical equipment or product (other than a pharmaceutical product)
31 that has therapeutic value, diagnostic value, or both, and is
32 regulated by the federal Food and Drug Administration[;].

33 "New Jersey emerging technology business" means a company
34 doing business, employing or owning capital or property, or
35 maintaining an office, in this State that has qualified research
36 expenses paid or incurred for research conducted in this State or
37 conducts pilot scale manufacturing in this State, and has fewer than
38 225 employees, of whom at least 75 percent are filling a position in
39 New Jersey.

40 "Partnership" means a syndicate, group, pool, joint venture or
41 other unincorporated organization through or by means of which
42 any business, financial operation or venture is carried on, and which
43 is not a trust or estate, a corporation or a sole proprietorship[;].

44 "Pilot scale manufacturing" means design, construction, and
45 testing of preproduction prototypes and models in the fields of
46 advanced computing, advanced materials, biotechnology, electronic
47 device technology, [environmental technology, and] life sciences,

1 medical device technology, and renewable energy technology, other
2 than for commercial sale, excluding sales of prototypes or sales for
3 market testing if total gross receipts, as calculated **[pursuant to]** in
4 the manner provided in section 6 of P.L.1945, c.162 (C.54:10A-6),
5 from such sales of the product, service or process do not exceed
6 \$1,000,000**[:]**.

7 "Qualified investment" means the non-refundable **[investment, at**
8 **risk in a small New Jersey-based high-technology business,]**
9 transfer of cash **[that is transferred]** to **[the]** a **[small]** New
10 **[Jersey-based high-technology]** Jersey emerging technology
11 business by a taxpayer that is not a related person of the **[small]**
12 New **[Jersey-based high-technology]** Jersey emerging technology
13 business, the transfer of which is in connection with either (1) a
14 transaction in exchange for stock, interests in partnerships or joint
15 ventures, licenses (exclusive or non-exclusive), rights to use
16 technology, marketing rights, warrants, options or any items similar
17 to those included herein, including but not limited to options or
18 rights to acquire any of the items included herein; or (2) a purchase,
19 production or research agreement.

20 "Qualified research expenses" means qualified research expenses
21 as defined in section 41 of the federal Internal Revenue Code of
22 1986**[:, 26 U.S.C.s.41]** (26 U.S.C. s.41), as in effect on June 30,
23 1992, in the fields of advanced computing, advanced materials,
24 biotechnology, electronic device technology, **[environmental**
25 **technology,]** life sciences, [or] medical device technology, or
26 renewable energy technology[:].

27 "Related person" means:

- 28 a. a corporation, partnership, association or trust controlled by
29 the taxpayer;
30 b. an individual, corporation, partnership, association or trust
31 that is in the control of the taxpayer;
32 c. a corporation, partnership, association or trust controlled by
33 an individual, corporation, partnership, association or trust that is in
34 the control of the taxpayer; or
35 d. a member of the same controlled group as the taxpayer**[:]**.

36 "Renewable energy technology" means a technology involving
37 the generation of electricity from solar energy; wind energy; wave
38 or tidal action; geothermal energy; the combustion of gas from the
39 anaerobic digestion of food waste and sewage sludge at a biomass
40 generating facility; and the combustion of methane gas captured
41 from a landfill; a fuel cell powered by methanol, ethanol, landfill
42 gas, digester gas, biomass gas, or other renewable fuel but not
43 powered by a fossil fuel.

44 **["Small New Jersey-based high-technology business"** means a
45 corporation doing business, employing or owning capital or
46 property, or maintaining an office, in this State that has qualified
47 research expenses paid or incurred for research conducted in this

1 State or conducts pilot scale manufacturing in this State, and has
2 fewer than 225 employees, of whom 75% are New Jersey-based
3 employees filling a position or job in this State; and】

4 "Tax year" means the fiscal or calendar accounting year of a
5 taxpayer.

6 (cf: P.L.1997, c.349, s.2)

7

8 3. Section 3 of P.L.1997, c.349 (C.54:10A-5.30) is amended to
9 read as follows:

10 3. a. A taxpayer, upon approval of the taxpayer's application
11 therefor by the New Jersey Economic Development Authority and
12 in consultation with the director, shall be allowed a credit against
13 the tax imposed pursuant to section 5 of P.L.1945, c.162
14 (C.54:10A-5), in an amount equal to 10% of the qualified
15 investment made by the taxpayer 【during each of the three tax years
16 beginning on or after January 1 next following enactment of this
17 act,】 in a 【small】 New 【Jersey-based high-technology】 Jersey
18 emerging technology business, up to a maximum allowed credit of
19 \$500,000 for the tax year for each qualified investment made by the
20 taxpayer. 【An unused credit may be carried forward for use in
21 future years, subject to the \$500,000 per year limitation.】

22 b. A credit shall not be allowed pursuant to section 1 of
23 P.L.1993, c.175 (C.54:10A-5.24), for expenses paid from funds for
24 which a credit is allowed, or which are includable in the calculation
25 of a credit allowed, under this section.

26 【The tax imposed for a tax year pursuant to section 5 of
27 P.L.1945, c.162, shall first be reduced by the amount of any credit
28 allowed pursuant to section 19 of P.L.1983, c.303 (C.52:27H-78),
29 then by any credit allowed pursuant to section 12 of P.L.1985, c.227
30 (C.55:19-13), then by any credit allowed pursuant to section 42 of
31 P.L.1987, c.102 (C.54:10A-5.3), then by any credit allowed under
32 section 3 of P.L.1993, c.170 (C.54:10A-5.6), then by any credit
33 allowed under section 3 or 4 of P.L.1993, c.171 (C.54:10A-5.18 or
34 C.54:10A-5.19), then by any credit allowed under section 1 of
35 P.L.1993, c.175 (C.54:10A-5.24), and then by any credit allowed
36 under section 1 of P.L.1993, c.150 (C.27:26A-15), prior to applying
37 any credits allowable pursuant to this section. Credits allowable
38 pursuant to this section shall be applied in the order of the credits'
39 tax years. The amount of the credits applied under this section
40 against the tax imposed pursuant to section 5 of P.L.1945, c.162, for
41 a tax year shall not exceed 50% of the tax liability otherwise due
42 and shall not reduce the tax liability to an amount less than the
43 statutory minimum provided in subsection (e) of section 5 of
44 P.L.1945, c.162.】 Notwithstanding any other provision of law, the
45 order of priority in which the credit allowed by this section and any
46 other credits allowed by law may be taken shall be as prescribed by
47 the director.

1 c. Except as provided in subsection d. of this section, the
2 amount of tax year credit otherwise allowable under this section
3 which cannot be applied for the tax year against tax liability
4 otherwise due for that tax year [to the limitations of subsection b.
5 of this section] may either be carried over, if necessary, to the 15
6 tax years following [a credit's] the tax year for which the credit
7 was allowed or, at the election of the taxpayer, be claimed as and
8 treated as an overpayment for the purposes of R.S.54:49-15,
9 provided, however, that section 7 of P.L.1992, c.175 (C.54:49-15.1)
10 shall not apply.

11 d. A taxpayer may not carry over any amount of credit [or
12 credits] allowed under subsection a. of this section to a tax year
13 during which a corporate acquisition with respect to which the
14 taxpayer was a target corporation occurred or during which the
15 taxpayer was a party to a merger or a consolidation, or to any
16 subsequent tax year, if the credit was allowed for a tax year prior to
17 the year of acquisition, merger or consolidation, except that if in the
18 case of a corporate merger or corporate consolidation the taxpayer
19 can demonstrate, through the submission of a copy of the plan of
20 merger or consolidation and such other evidence as may be required
21 by the director, the identity of the constituent corporation which
22 was the acquiring person, a credit allowed to the acquiring person
23 may be carried over by the taxpayer. As used in this subsection,
24 "acquiring person" means the constituent corporation the
25 stockholders of which own the largest proportion of the total voting
26 power in the surviving or consolidated corporation after the merger
27 or consolidation.

28 e. The Executive Director of the New Jersey Economic
29 Development Authority, in consultation with the director, shall
30 adopt rules in accordance with the "Administrative Procedure Act,"
31 P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement
32 sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through
33 54:10A-5.30) and section 4 of P.L. , c. (C.) (pending before
34 the Legislature as this bill), including but not limited to: examples
35 of and the determination of qualified investments of which
36 applicants must provide documentation with their tax credit
37 application; the promulgation of procedures and forms necessary to
38 apply for a credit; and provisions for credit applicants to be charged
39 an initial application fee, and ongoing service fees, to cover the
40 administrative costs related to the credit.

41 The amount of credits approved by the Executive Director of the
42 New Jersey Economic Development Authority, and in consultation
43 with the director, pursuant to subsection a. of this section and
44 pursuant to section 4 of P.L. , c. (C.) (pending before the
45 Legislature as this bill) shall not exceed a cumulative total of
46 \$25,000,000 in any calendar year to apply against the tax imposed
47 pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and the tax

1 imposed pursuant to the "New Jersey Gross Income Tax Act,"
2 N.J.S.54A:1-1 et seq. If the cumulative amount of credits allowed
3 to taxpayers in a calendar year exceeds the amount of credits
4 available in that year, then taxpayers who have first applied for and
5 have not been allowed a credit amount for that reason shall be
6 allowed, in the order in which they have submitted an application,
7 the amount of the tax credit on the first day of the next succeeding
8 calendar year in which tax credits under this section and section 4
9 of P.L. , c. (C.) (pending before the Legislature as this bill)
10 are not in excess of the amount of credits available.

11 (cf: P.L.1997, c.349, s.3)

12

13 4. (New section) a. A taxpayer, upon approval of the
14 taxpayer's application therefor by the New Jersey Economic
15 Development Authority, and in consultation with the director, shall
16 be allowed a credit against the tax otherwise due for the taxable
17 year under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1
18 et seq., in an amount equal to 10 percent of the qualified investment
19 made by the taxpayer in a New Jersey emerging technology
20 business, up to a maximum allowed credit of \$500,000 for the
21 taxable year for each qualified investment made by the taxpayer.

22 b. The amount of the credit allowed pursuant to this section
23 shall be applied against the tax otherwise due under the "New
24 Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., after all other
25 credits and payments. If the credit exceeds the amount of tax
26 liability otherwise due, that amount of excess shall be an
27 overpayment for the purposes of N.J.S.54A:9-7, provided, however,
28 that subsection f. of N.J.S.54A:9-7 shall not apply.

29 c. A partnership shall not be allowed a credit under this section
30 directly, but the amount of credit of a taxpayer in respect of a
31 distributive share of partnership income under the "New Jersey
32 Gross Income Tax Act," N.J.S.54A:1-1 et seq., shall be determined
33 by allocating to the taxpayer that proportion of the credit acquired
34 by the partnership that is equal to the taxpayer's share, whether or
35 not distributed, of the total distributive income or gain of the
36 partnership for its taxable year ending within or with the taxpayer's
37 taxable year. For the purposes of subsection b. of this section, the
38 amount of tax liability that would be otherwise due of a taxpayer is
39 that proportion of the total liability of the taxpayer that the
40 taxpayer's share of the partnership income or gain included in gross
41 income bears to the total gross income of the taxpayer.

42 d. The Executive Director of the New Jersey Economic
43 Development Authority, in consultation with the director, shall
44 adopt rules in accordance with the "Administrative Procedure Act,"
45 P.L.1968, c.410 (C.52:14B-1 et seq.) as are necessary to implement
46 sections 1 through 3 of P.L.1997, c.349 (C.54:10A-5.28 through
47 54:10A-5.30) and section 4 of P.L. , c. (C.) (pending
48 before the Legislature as this bill), including but not limited to:

1 examples of and the determination of qualified investments of
2 which applicants must provide documentation with their tax credit
3 application; the promulgation of procedures and forms necessary to
4 apply for a credit; and provisions for credit applicants to be charged
5 an initial application fee, and ongoing service fees, to cover the
6 administrative costs related to the credit.

7 The amount of credits approved by the Executive Director of the
8 New Jersey Economic Development Authority and the Director of
9 the Division of Taxation in the Department of the Treasury pursuant
10 to subsection a. of this section and pursuant to section 3 of
11 P.L.1997, c.349 (C.54:10A-5.30) shall not exceed a cumulative total
12 of \$25,000,000 in any calendar year to apply against the tax
13 imposed pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5), and
14 the tax imposed pursuant to the "New Jersey Gross Income Tax
15 Act," N.J.S.54A:1-1 et seq. If the cumulative amount of credits
16 allowed to taxpayers in a calendar year exceeds the amount of
17 credits available in that year, then taxpayers who have first applied
18 for and have not been allowed a credit amount for that reason shall
19 be allowed, in the order in which they have submitted an
20 application, the amount of the tax credit on the first day of the next
21 succeeding calendar year in which tax credits under this section and
22 section 3 of P.L.1997, c.349 (C.54:10A-5.30) are not in excess of
23 the amount of credits available.

24 e. As used in this section:

25 "Advanced computing" means a technology used in the
26 designing and developing of computing hardware and software,
27 including innovations in designing the full spectrum of hardware
28 from hand-held calculators to super computers, and peripheral
29 equipment.

30 "Advanced materials" means materials with engineered
31 properties created through the development of specialized
32 processing and synthesis technology, including ceramics, high
33 value-added metals, electronic materials, composites, polymers, and
34 biomaterials.

35 "Biotechnology" means the continually expanding body of
36 fundamental knowledge about the functioning of biological systems
37 from the macro level to the molecular and sub-atomic levels, as
38 well as novel products, services, technologies and sub-technologies
39 developed as a result of insights gained from research advances
40 which add to that body of fundamental knowledge.

41 "Control" with respect to a corporation, means ownership,
42 directly or indirectly, of stock possessing 80 percent or more of the
43 total combined voting power of all classes of the stock of the
44 corporation entitled to vote; and "control," with respect to a trust,
45 means ownership, directly or indirectly, of 80 percent or more of
46 the beneficial interest in the principal or income of the trust. The
47 ownership of stock in a corporation, of a capital or profits interest in
48 a partnership or association or of a beneficial interest in a trust shall

1 be determined in accordance with the rules for constructive
2 ownership of stock provided in subsection (c) of section 267 of the
3 federal Internal Revenue Code of 1986 (26 U.S.C. s.267), other than
4 paragraph (3) of subsection (c) of that section.

5 "Controlled group" means one or more chains of corporations
6 connected through stock ownership with a common parent
7 corporation if stock possessing at least 80 percent of the voting
8 power of all classes of stock of each of the corporations is owned
9 directly or indirectly by one or more of the corporations and the
10 common parent owns directly stock possessing at least 80 percent of
11 the voting power of all classes of stock of at least one of the other
12 corporations.

13 "Director" means the Director of the Division of Taxation in the
14 Department of the Treasury.

15 "Electronic device technology" means a technology involving
16 microelectronics, semiconductors, electronic equipment, and
17 instrumentation, radio frequency, microwave, and millimeter
18 electronics, and optical and optic-electrical devices, or data and
19 digital communications and imaging devices.

20 "Life sciences" means the production of medical equipment,
21 ophthalmic goods, medical or dental instruments, diagnostic
22 substances, biopharmaceutical products; or physical and biological
23 research.

24 "Medical device technology" means a technology involving any
25 medical equipment or product (other than a pharmaceutical product)
26 that has therapeutic value, diagnostic value, or both, and is
27 regulated by the federal Food and Drug Administration.

28 "New Jersey emerging technology business" means a company
29 doing business, employing or owning capital or property, or
30 maintaining an office, in this State that has qualified research
31 expenses paid or incurred for research conducted in this State or
32 conducts pilot scale manufacturing in this State, and has fewer than
33 225 employees, of whom at least 75 percent are filling a position in
34 New Jersey.

35 "Partnership" means a syndicate, group, pool, joint venture or
36 other unincorporated organization through or by means of which
37 any business, financial operation or venture is carried on, and which
38 is not a trust or estate, a corporation or a sole proprietorship.

39 "Pilot scale manufacturing" means design, construction, and
40 testing of preproduction prototypes and models in the fields of
41 advanced computing, advanced materials, biotechnology, electronic
42 device technology, life sciences, medical device technology, and
43 renewable energy technology, other than for commercial sale,
44 excluding sales of prototypes or sales for market testing if total
45 gross receipts, as calculated in the manner provided in section 6 of
46 P.L.1945, c.162 (C.54:10A-6), from such sales of the product,
47 service or process do not exceed \$1,000,000.

1 "Qualified investment" means the non-refundable transfer of
2 cash to a New Jersey emerging technology business by a taxpayer
3 that is not a related person of the New Jersey emerging technology
4 business, the transfer of which is in connection with either (1) a
5 transaction in exchange for stock, interests in partnerships or joint
6 ventures, licenses (exclusive or non-exclusive), rights to use
7 technology, marketing rights, warrants, options or any items similar
8 to those included herein, including but not limited to options or
9 rights to acquire any of the items included herein; or (2) a purchase,
10 production or research agreement.

11 "Qualified research expenses" means qualified research expenses
12 as defined in section 41 of the federal Internal Revenue Code of
13 1986 (26 U.S.C. s.41), as in effect on June 30, 1992, in the fields of
14 advanced computing, advanced materials, biotechnology, electronic
15 device technology, life sciences, medical device technology, or
16 renewable energy technology.

17 "Related person" means:

18 a. a corporation, partnership, association or trust controlled by
19 the taxpayer;

20 b. an individual, corporation, partnership, association or trust
21 that is in the control of the taxpayer;

22 c. a corporation, partnership, association or trust controlled by
23 an individual, corporation, partnership, association or trust that is in
24 the control of the taxpayer; or

25 d. a member of the same controlled group as the taxpayer.

26 "Renewable energy technology" means a technology involving
27 the generation of electricity from solar energy; wind energy; wave
28 or tidal action; geothermal energy; the combustion of gas from the
29 anaerobic digestion of food waste and sewage sludge at a biomass
30 generating facility; and the combustion of methane gas captured
31 from a landfill; a fuel cell powered by methanol, ethanol, landfill
32 gas, digester gas, biomass gas, or other renewable fuel but not
33 powered by a fossil fuel.

34

35 5. This act shall take effect immediately and section 3 shall
36 apply to privilege periods beginning on or after January 1, 2011 and
37 section 4 shall apply to taxable years beginning on or after January
38 1, 2011.

39

40

41

STATEMENT

42

43 This bill, the "New Jersey Angel Investor Tax Credit Act,"
44 revives the expired Small New Jersey-based High Technology
45 Business Investment Tax Credit by establishing credits against
46 corporation business and gross income taxes for investing in New
47 Jersey emerging technology businesses. Subject to certain
48 limitations, the corporation business and gross income tax credits

1 equal ten percent of a taxpayer's qualified investment in an
2 emerging technology company with fewer than 225 employees, of
3 whom at least 75 percent are filling a position in New Jersey.
4 Purchase, production, and research agreements qualify as creditable
5 investments. The permanent program is subject to a \$25 million
6 annual cap. In addition, tax credit recipients cannot claim tax
7 credits for that part of an investment in a single company that
8 exceeds \$500,000. If the tax credit amount exceeds a gross income
9 taxpayer's tax liability, the State will issue a refund to the taxpayer
10 in the amount of the excess; while a corporation business taxpayer
11 may choose between having the amount of the excess refunded or
12 carried forward to be applied against tax liabilities in the next 15
13 years.

14 The legislation recognizes that angel investors can play a vital
15 part in New Jersey's economic recovery. Angel investments are
16 equity placements by high net worth individuals into high-risk start-
17 up ventures. Some angel investors do not just invest in, but also
18 mentor, coach, and assist promising start-up enterprises. A 2010
19 working paper by William R. Kerr, Josh Lerner, and Antoinette
20 Schoar of the Harvard Business School, "The Consequences of
21 Entrepreneurial Finance: A Regression Discontinuity Analysis,"
22 shows that start-up firms receiving angel capital have a significantly
23 higher rate of survival, faster growth, and superior access to
24 fundraising outside the angel group than early-stage firms devoid of
25 angel financing. It is therefore in New Jersey's best interest to
26 encourage angel investors to examine and invest in New Jersey
27 technology start-up businesses, as successful start-ups create jobs,
28 generate wealth, and enhance the overall well-being in the state.